

Amendment No. 2 to HB2343

Ferguson
Signature of Sponsor

AMEND Senate Bill No. 2364

House Bill No. 2343*

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

As amended by House Amendment 686 (Judiciary Committee Amendment 1), by inserting the following as new Sections 8, 9 and 10 and renumbering the existing Sections 8 and 9 accordingly:

SECTION 8. Tennessee Code Annotated, Section 40-15-105(a)(3) is amended by adding the following at the end of the sixth sentence before the period:

“and after the effective date of this act if the individual is charged with violation of a criminal statute the elements of which constitute abuse, neglect or misappropriation of the property of a vulnerable person as defined in section 68-11-1004(a), the memorandum of understanding or diversion order contains a provision that the individual agrees without contest or any further notice or hearing that his or her name shall be permanently placed on the registry governed by section 68-11-1004 a copy of which shall be forwarded to the department of health.”

SECTION 9. Tennessee Code Annotated, Section 40-35-313 is amended in subsection (a)(3)(A) by adding the following new sentence at the end of that item:

“No order deferring further proceedings and placing the defendant on probation as authorized by this subsection (a) may be entered by the court if the defendant was charged with violation of a criminal statute the elements of which constitute abuse, neglect or misappropriation of the property of a vulnerable person as defined in section 68-11-1004(a) on or after effective date of this act unless the order contains a provision that the defendant agrees without contest or any further notice or hearing that his or her name shall be permanently placed on the registry governed by section 68-11-1004 a copy of which shall be forwarded to the department of health.”

SECTION 10. Tennessee Code Annotated, Section 68-11-1004 is amended by deleting the language of that section in its entirety and substituting instead the following:

(a) As used in this section, unless the context requires otherwise:

(1) "Criminal disposition" means the disposition of criminal charges constituting an offense against a vulnerable person as that term is defined by this subsection either by conviction, or by pre-trial diversion authorized by any court pursuant to section Title 40, Chapter 15, or by an order deferring further proceedings and placing an individual on probation (post-trial diversion) issued pursuant to Title 40, Chapter 35.

(2) "Offense against a vulnerable person" means any act or omission which constitutes abuse, or neglect or misappropriation of the property of a vulnerable person, or any crime the elements of which constitutes abuse, or neglect or misappropriation of the property of a vulnerable person.

(3) "Vulnerable Person" means anyone who is under eighteen (18) years of age, or who, by reason of advanced age or other physical or mental condition, is vulnerable to or who has been determined to have suffered from abuse, neglect, or misappropriation of property, and who was, at the time of the commission of an alleged offense against him or her, receiving protective services from a state agency pursuant to law, or in the care of either a state agency, or an entity which is licensed or regulated by a state agency, or an entity providing services under the provisions of a contract between that entity and a state agency.

(b)

(1) The department of health shall include the name of an individual on the registry when it receives notification from an agency of Tennessee state government that the individual has been found by that agency, pursuant to that agency's procedures and definitions, to have committed abuse, or neglect or misappropriation of the property of a vulnerable person.

(2) Such notification shall consist of a copy of an emergency, initial, or final administrative order, a judicial order, or other evidence indicating that the

agency has afforded the individual an opportunity for an administrative due process hearing pursuant to the requirements of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, or equivalent judicial or administrative procedures; provided, that nothing in this part shall require the state agency to establish any new procedures or to modify any existing procedures it may use for the provision of due process to such individual.

(3) Such notification shall include the individual's last known mailing address, social security number, and the agency's definition of abuse, neglect, or misappropriation of property which it used in making the determination.

(c) The department shall also include an individual's name on the registry when it receives a copy of a criminal disposition from the Tennessee bureau of investigation, or other federal, state or local law enforcement agency, or court, or criminal justice agency, indicating that such criminal disposition against the named individual was the result of an offense against a vulnerable person.

(d) Upon receiving the notification set out in subsection (b) or (c), the department shall, in addition to entering the individual's name on the registry, also maintain and make available upon request, the name of the reporting agency and the applicable definition of abuse, neglect, or misappropriation of property, supplied by that agency. The individual's name once entered on the registry shall remain on the registry, except as provided in subsection (g), even if such individual meets the requirements of any criminal disposition and regardless of any expungement that may be ordered by any court or that may take place by operation of law in connection with such criminal disposition. Provided however, any expungement reported to the department shall result in the removal from the registry of everything regarding the criminal disposition, except the individual's name, and destruction of any documentation of such criminal disposition.

(e) Upon entry of this information, the department will notify the individual, at his or her last known mailing address, of his or her inclusion on the registry. Although the individual will not be entitled or given the opportunity to contest or dispute either the prior

hearing conclusions, or the content or terms of any criminal disposition, or attempt to refute the factual findings upon which such are based, the individual may challenge the accuracy of the report that such a criminal disposition has occurred, or such hearing conclusions were made. If the individual makes such a challenge within thirty (30) days of notification of inclusion on the registry, the commissioner, or the commissioner's designee, shall afford the individual an opportunity for a hearing on the matter which complies with the requirements of due process and the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(f) If the department receives from the Tennessee bureau of investigation or other federal, state or local law enforcement agency, or any court, or criminal justice agency documentation substantiating that an offense against a vulnerable person has been committed by an individual, whose name has not already been placed on the registry pursuant to subsections (b) or (c), the department shall, prior to placing the individual's name on the registry, afford that individual an opportunity for an administrative due process hearing pursuant to the requirements of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, or equivalent judicial or administrative procedures; provided, that nothing in this part shall require the department to establish any new procedures or to modify any existing procedures it may use for the provision of due process. If, as a result of such hearing, the department finds the individual committed an offense against a vulnerable person the department shall include the name of the individual on the registry.

(g) Any individual's name shall be immediately removed from the registry if:

(1) Upon a hearing, the commissioner, or his designee, determines that the initial report of a criminal disposition, or the administrative hearing conclusions never occurred; or

(2) At the final step taken in an appellate process, a reported conviction, or an emergency order or administrative hearing result is reversed.